

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRANDON LEWIS KELLY,

Defendant.

CR 18-15-GF-BMM-JTJ

**AMENDED FINDINGS AND
RECOMMENDATIONS**

I. Synopsis

Defendant Brandon Lewis Kelly (Kelly) has been accused of violating the conditions of his supervised release. Kelly admitted alleged violations 1 and 2. Kelly denied alleged violation 3. The government failed to satisfy its burden of proof with respect to alleged violation 3. Kelly's supervised release should be revoked. Kelly should be placed in custody for 8 months, with 48 months of supervised release to follow.

II. Status

Kelly pleaded guilty to Failure to Register as a Sex Offender on May 2, 2018. (Doc. 28). The Court sentenced Kelly to 12 months and 1 day of custody, followed by 5 years of supervised release. (Doc. 46). Kelly's current

term of supervised release began on October 22, 2020. (Doc. 85 at 2).

Petition

The United States Probation Office filed an Amended Petition on May 25, 2021, requesting that the Court revoke Kelly's supervised release. (Doc. 85). The Amended Petition alleges that Kelly has violated the conditions of his supervised release: 1) by committing other crimes; and 2) by failing to reside at the place approved by his probation officer.

Initial appearance

Kelly appeared before the undersigned for his initial appearance on May 27, 2021. Kelly was represented by counsel. Kelly stated that he had read the petition and that he understood the allegations. Kelly waived his right to a preliminary hearing. The parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

The Court conducted a revocation hearing on May 27, 2021. Kelly admitted that he had violated the conditions of his supervised release: 1) by committing the crime described in alleged violation 1; and 2) by failing to reside at the place approved by his probation officer. Kelly denied alleged violation 3. The government failed to satisfy its burden of proof with respect to alleged violation 3.

The violations that Kelly admitted are serious and warrant revocation of Kelly's supervised release.

Kelly's violations are Grade B violations. Kelly's criminal history category is III. Kelly's underlying offense is a Class C felony. Kelly could be incarcerated for up to 36 months. Kelly could be ordered to remain on supervised release for up to 56 months, less any custody time imposed. The United States Sentencing Guidelines call for a term of custody of 8 to 14 months.

III. Analysis

Kelly's supervised release should be revoked. Kelly should be incarcerated for 8 months, with 48 months of supervised release to follow. This sentence is sufficient but not greater than necessary.

IV. Conclusion

The Court informed Kelly that the above sentence would be recommended to United States District Judge Brian Morris. The Court also informed Kelly of his right to object to these Findings and Recommendations within 14 days of their issuance. The Court explained to Kelly that Judge Morris would consider a timely objection before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose. Kelly stated that he wished to waive his right to object to these Findings and Recommendations, and that he wished to

waive his right to allocute before Judge Morris.

The Court **FINDS:**

That Brandon Lewis Kelly violated the conditions of his supervised release by committing the crime described in alleged violation 1; and by failing to reside at the place approved by his probation officer.

The Court **RECOMMENDS:**

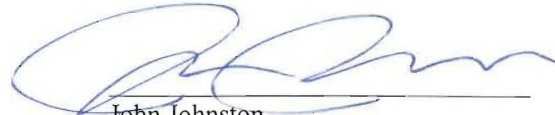
That the District Court revoke Kelly's supervised release and commit Kelly to the custody of the United States Bureau of Prisons for a term of 8 months, with 48 months of supervised release to follow.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A United States district court judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district court judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district court judge, and may waive the right to appear and allocute before a

district court judge.

DATED this 27th day of May, 2021.

A handwritten signature in blue ink, appearing to read 'John Johnston', is written over a horizontal line.

John Johnston
United States Magistrate Judge